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A Community Divided:
Coping With a Locally Unwanted Land Use

Capstone Project

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Abstract

Locally Unwanted Land Uses constitute a phenomenon peculiar to twentieth century industrialized countries. LULUs, as they have come to be known, are a facility or development that is perceived by citizens, communities, regions, or states as undesirable, so much so that effort and resources sufficient to end the threat of the facility being built in a location that will significantly impact those citizens, communities, regions, or states will be expended. This scenario has been replayed time and again in this country and others, in response to uses such as halfway houses, generating plants, and landfills.

This paper proposes to recount an example of a LULU and the reaction it encountered in Windham, Maine. The project – a paper recycling plant – was perceived by town officials and the business community as a boon to the town, but seen by neighbors as an unwelcome intrusion into their way of life in an area that would be grossly impacted by such an operation.

The media was quick to label the residents who opposed the plant as NIMBYs – Not In My Back Yard reactionaries who were acting out of selfish interests. Indeed, much of the scholarly literature on the subject recognizes those who resist development as further examples of NIMBYism, often with no redeeming qualities. The individuals, groups, communities, or states are simply and narrowly focused on one thing only: putting an end to the proposed development that threatens their “back yard,” is the conclusion of much that is written on the subject. Industry and commerce, in particular, have sounded a call to arms to alert the like-minded that extraordinary measures will be necessary if projects are to succeed in the face of NIMBYs.

More recently, however, those taking a second look at the phenomenon are having second thoughts. Perhaps those who react against development, in some cases, are doing so out of more than selfish instincts, and may even be performing a valuable service for the society which has promulgated the types of projects they find so undesirable. This paper will consider the problems and benefits associated with LULU incidents, and offer recommendations for successfully meeting the challenge of LULUs.

Introduction

While considering a topic for the Capstone project which would complete my course of studies in the Public Policy and Management program at the Muskie Institute, I developed a short list of criteria: the issue would be pertinent to my job as a land use planner; it should be an issue of local interest, that is, relevant to the Portland area, the state of Maine, or the New England region; and researching and writing the paper should enhance my understanding and knowledge of a current public policy issue. In deciding to focus on the broad topic of Locally Unwanted Land Uses (LULUs) and the Not In My Back Yard phenomenon, while concurrently narrowing that focus to a nine month episode in Windham, Maine which vividly demonstrated the former, I have satisfactorily addressed my criteria.

This paper is presented in two sections: 1) A Community Divided, which relates a corporation's intent to site a major industrial development in Windham, and the response by neighbors to this LULU; and 2) Coping With A Locally Unwanted Land Use, which reviews a portion of the literature on LULUs, examines the Windham incident in light of findings contained therein, and concludes with six recommendations for improving the decision making process in not only the Windham case, but, hopefully, any siting decision in which a developer, whether a corporation, a small scale contractor, or a unit of government, proposes to site a controversial project and is shortly thereafter faced with opposition from residents.

1. A Community Divided

The town of Windham, Maine was incorporated in 1736, then an isolated frontier community of about fifty square miles in area, today a thriving suburb of Portland, the state's largest city. Windham and other communities in Cumberland County have shared a similar characteristic during the nineteenth and twentieth centuries: an agrarian past has slowly given way to an increased dependence on Maine's largest metropolitan area, dominated by the cities of Portland, South Portland and Westbrook, as a provider of jobs and services. Windham and its sister towns have also shared somewhat similar growth patterns. In over two centuries of existence, the number of residents in Windham crept to about 6,500 by 1970; over the next twenty years, the town's population would double in size.

As with most, if not all, New England communities, the town of Windham depends heavily on property taxes for operating revenues. Municipal leaders had recognized this burden on residential property owners for a number of years: the town's first comprehensive plan called for increased industrial development as early as 1960. With no direct access to the Maine turnpike and a fading rail system, however, Windham's location, though a twenty minute drive to downtown Portland, put it at a disadvantage to those communities intersected by either the turnpike or Interstate-95. Companies seeking to expand or relocate to southern Maine may have recognized the fine scenic qualities and natural resources in Windham -- lakes, rivers, and forests -- but, inasmuch as industry

thrives on its proximity to sources of supply and demand, Windham offered little other than as a convenient and attractive community for employees to make their homes.

This changed abruptly in late 1989, when Cianbro Corp., a Pittsfield, Maine-based development firm; Besicorp, Inc., of New York; and Frank Piffath, a local developer, announced plans for a natural gas powered co-generation plant on land off River Road in Windham, an area of town marked by farms and open fields. The three had chosen their location carefully: though rural in character, the proposed site was adjacent to an out of service but still functional rail line, intersected by a major power line, and less than two miles from a potential connection to the City of Westbrook's sewer system. Though neighbors of the would-be plant wasted little time in denouncing the project, the majority of the Windham Town Council responded enthusiastically to the proposed plant, and by March 1990 had approved an overlay zone that would allow industrial development on the one hundred fifty acre parcel of farmland. The die was cast for the first modern, large scale industrial development in the town's history.

The establishment of an industrial zone in what had been mainly a residential and agricultural area sparked a backlash to what many area residents regarded as an ill conceived and undesirable action on the part of the town council. Neighbors objected to the plan when first conceived, and spoke en masse against the project at a public hearing. In a neighborhood where house lots could still be measured in the Old English system of rods, descendants of the town's first settlers and others resisted efforts to introduce development in a field that was, literally, their backyard.

The response of neighbors to the proposed industrial site did not dampen the interest of either developers or those in Windham who welcomed economic development

as a means of reducing the local tax burden. The announcement of the co-generation plant was soon followed by other proposals. A \$6 million to \$10 million sludge drying plant would also be built on the River Road site, which would tentatively be named "Settler's Park," a nod to the area's history. Later the same month, in January 1991, a coup: Highland America, Inc., of Rhode Island, announced that it had narrowed its search for siting an \$80 million newsprint recycling plant to two potential sites: Windham and a town in New Hampshire.

By this time, town officials had begun to mobilize in anticipation of developers' needs for what was by now being referred to as an "environmental theme park," a collection of businesses focused on recycling and other environmentally friendly uses. Members of the Windham Municipal Development Committee met with the director of the Maine Waste Management Agency and area consultants to lay plans for an industrial park that had assumed statewide significance. And the local impact was lost on no one; collectively, the proposed co-generation plant, sludge drying facility, and newsprint recycling operation could generate close to \$1.5 million in property taxes yearly and employ one hundred fifty workers.

By June 1991, the Municipal Development Committee was chrysalizing from a municipally appointed committee to a private organization, the Windham Economic Development Corporation. As a corporation acting on behalf of the town of Windham, the WEDC would be able to conduct negotiations behind closed doors, as the Municipal Development Committee could not. The WEDC was formed by volunteers, chiefly business people, who felt that the potential benefits of industrial development outweighed whatever drawbacks there may be.

The impact of the national recession began to make itself felt over the summer. Plans that had been on a fast track slowed while developers searched for financing and assessed markets that had contracted since the boom of the 1980s. Then, in September, a Boston-based firm appeared before the Windham planning board with plans for a project that would consume the town in a debate over the merits of industrial development for the next ten months.

The Stone and Webster Development Corporation, a Fortune 500 firm, in concert with Nichols and Company, a Portland consultant, proposed a \$50 million recycling plant that would process high quality office paper into pulp for sale to paper manufacturers. Stone and Webster and Nichols combined forces to form Virgin Pulp Substitute, Inc., which would develop and operate a plant that would cater to paper recycling needs across New England. Two hundred fifty tons of paper would be trucked to the site daily at the outset; rail transport was mentioned as a future possibility to reduce costs and lessen the impact on local roads. The operation would employ as many as thirty people. Property taxes approaching \$1 million a year could be expected from the plant, said VPS, which also made a request: that a Tax Increment Financing district be established on the site. The TIF would allow taxes generated by the development to be used for infrastructure costs associated with the project. Improvements to the only road near the site, construction of an access road, and the extension of utility lines -- sewer, power, possibly natural gas -- would be financed by the TIF.

The town council did not balk when presented with the innovative financing request, a sign that the seven policymakers were not only interested, but actively pursuing the Stone and Webster proposal. Windham, with an economy based largely on agricultural

production as recently as the 1960s, seemed poised to step to the forefront of Maine communities aggressively seeking a balance between residential, commercial and industrial development.

Anticipating Opposition

While proponents of the plan to construct and operate the paper recycling plant waxed enthusiastic about the likelihood of broadening the town's tax base and putting local people to work, neighbors of the Settler's Park location continued to express fears about the impact of industrial development on the character of their neighborhood. Backers of the VPS project recognized the concerns early on, and took steps to address the issue:

- James V. Rossi, a vice president of the Stone and Webster Development Corporation, was quoted prior to his initial appearance before the planning board as saying, "Maybe we're notifying the town early, but we want to be open . . . we think a plant will be well accepted."
- "There's always going to be that 'not in my back yard syndrome'," said Richard Clark, an insurance executive and member of the Windham Economic Development Corporation. He expressed optimism that the opposition of neighbors alone would fail to halt development of the plant, saying that, ". . . we're finally on to something here that's going to benefit everyone in this town."
- The WEDC, perceived by supporters and opponents alike as the major local backer of the development, held an informational forum at a local restaurant. Town Manager Glenn Fratto, Town Planner Steve Westra, and Richard Clark explained to those

present the reasons for transforming the town-appointed Windham Municipal Development Committee into a private corporation.

The next development proposal made to the town of Windham served to alert a different neighborhood; ultimately, the setting for the showdown between supporters of industrial expansion and those who preferred to maintain the town's residential character.

For a number of years the Greater Portland area's two largest producers of septic sludge, the city of South Portland and the Portland Water District, had utilized landfills and the spreading of sludge on private land as disposal options, the former an expensive solution and the latter occasionally opposed by neighbors. The Water District invited bids for a permanent answer to the sludge disposal problem in 1990. In October 1991, after a contract had been awarded by the District, a Topsham, Maine company presented its plans for a \$3 million sludge processing plant to the Windham planning board.

The Water District was key to the location proposed by Northern Composting, Inc. The proposed plant would not follow other industrial suitors into the Settler's Park overlay zone. Instead, they would build in the town's only conventional industrial zone, in the southern part of Windham. The site was buffered from neighbors on two sides by land owned by the Water District. A lumber company owned the property in question, a four acre parcel about one thousand feet from the Presumpscot River. An unused rail line, the same that ran through the Settler's Park site, crossed the property and the main access road to the site, Gambo Road. The Gambo area was of interest for two reasons: it had been the site of a Civil War era gunpowder mill, and the historic Gambo Bridge which crossed the river between Windham and neighboring Gorham had been out of operation

for about two years due to structural deterioration. The area had been formally zoned for industrial uses since 1976, when the town had adopted land use zoning for the first time. Because of the close proximity of hydropower, the area had been home to industrial tenants for over a century, chiefly mills processing a variety of materials, including textiles and steel.

Two days after Northern Composting, Inc., appeared before the planning board, neighbors in the Gambo area met to discuss concerns. They felt that the initial presentation before the board had been vague and lacking in details, and feared that the plant may be expanded to process sludge from sources throughout southern Maine, including South Portland, the largest city in southern Maine not contracted with the Portland Water District for sewer service. Within a week, led by spokesperson Judith Waltz, the neighbors began distributing informational flyers on a door to door basis, initiated a petition drive, and began placing signs in Windham opposing the project. Waltz, who lived on Gambo Road, "...strongly emphasized that the group is not opposed to any or all development, but just this particular proposal," according to a local newspaper account.

Three weeks later the Northern Composting proposal was pre-empted by an announcement that Regional Waste Systems, Inc., a quasi-municipal enterprise serving the solid waste disposal needs of a few dozen southern Maine communities, was developing plans for its own sludge processing facility. Economies of scale would dictate lower costs for RWS than for the plant proposed in Windham. Most importantly, the Portland Water District indicated a willingness to cast its lot with the regional scheme. With that, the Northern Composting plant never left the drawing board. It had, however, served a purpose: the Gambo industrial zone had come to the attention of officials at VPS. A tour

of the site with town officials led to development cost comparisons between Gambo (\$500,000-\$1 million) and the proposed Settler's Park (\$3 million-\$5 million). With rail access at both locations, the Gambo site, with an access road already in place, and lower costs for extending utility lines, quickly became the preferred spot for the paper recycling plant.

Active negotiations "behind closed doors," as portrayed in the local media, were initiated between VPS, the WEDC, and the Portland Water District. The District was involved for two reasons: its ownership of the land being considered for the recycling plant, and the project's need for a wastewater disposal plant on the site, a facility that would be operated by the District. As a public utility, the District's charter prohibited it from selling assets to a private firm or individual; however, the District could sell land to a quasi-public corporation like the WEDC, which in turn would sell the property to Stone and Webster. The WEDC had also initiated talks with the state's electric utility company and a natural gas provider by proposing that the cost of extending service to the site be built into the recycling plant's future rates, decisions which would have a direct impact on start-up costs, and on the Tax Increment Financing district requested by VPS.

While the groundwork was being laid for the VPS project, a deliberate effort on the part of town officials and the developer to maintain an informative dialogue with neighbors of the project continued. On January 28, 1992 a meeting was held in the Windham Public Safety Building, with the stated purpose a question and answer session intended to provide information for neighbors of the proposed plant. Edward Nichols, of VPS, served as the main spokesman at the meeting. He told the two dozen people in attendance that town support for the project was essential to the plant being built in

Windham: "If it's the will of the community that you do not want us to develop this particular operation here, we would understand . . . (w)e have a responsibility to be responsive to any questions you have, so we may give our best understanding of what we're doing, how we're doing it, what the documentation is, what our timetable is. We would like an informed community to make the decision . . ." Those in attendance at the meeting responded with concerns that included increased truck traffic, odors generated by the plant, and the impact on quality of life. The comment of one resident: "Some of the apprehension we're feeling is that we are basically a rural community. Maybe town planners are thinking tax base and we're thinking quality of life." Nonetheless, Nichols told a Portland newspaper a week later that building the plant at Gambo was "imminent," with a goal of being operational by 1993.

Another move by proponents of the project was a request by the WEDC that the Windham Conservation Commission, a volunteer committee appointed by the town council, form a sub-committee to explore the environmental impacts of the recycling plant and provide that information to the public. Chief on the sub-committee's agenda was perhaps the single key aspect of the VPS proposal to relocate the plant to the Gambo site. At Settler's Park, the plant could, with a two mile extension, have been connected to a Portland Water District-operated sewer system in the neighboring city of Westbrook. The Gambo site was not served by sewer and was miles further removed from the Westbrook sewer than was Settler's Park. The plant, when operational, would require as many as 800,000 gallons of water per day as part of the de-inking process. By necessity, part of the relocation to Gambo would include the construction of a wastewater treatment plant, to be operated by the Water District, for the discharge of effluent to the Presumpscot River.

Working with VPS and regulatory agencies in order to determine the effects of this effluent on the river would be part of the sub-committee's task.

The debate gained intensity by the end of February. A divided town council considered and approved, over the protests of dozens of sign-carrying residents, two measures that would further VPS's goal. The first authorized up to \$54,000 in expenditures that would allow Town Manager Fratto to contract with the Portland Water District for the design of a \$4 million wastewater treatment facility. The second was essentially a show of good faith on the part of the council; a non-binding development agreement with VPS that would provide assistance with securing financing for the plant. The text of the agreement was not made public prior to the council meeting, which developed into a major point of contention, with opponents arguing that they could not effectively discuss the item prior to council consideration if they had not read it. Town Manager Fratto responded that releasing negotiable contracts such as the development agreement would jeopardize the town's ability to conduct such negotiations, and that legally the council had the right to withhold the document. It was released to the public during the meeting.

The willingness of the council to conduct negotiations in such a manner added fuel to the opponents' argument. Judith Waltz, a leader of the anti-plant movement, told a newspaper reporter that the council's actions at the meeting prompted a rash of supportive phone calls to herself and others. "We're stronger than ever now and we're optimistic we can stop this thing," Waltz was quoted as saying. Others questioned whether the plant would broaden the town's tax base or instead create an increased demand for services such as fire and police that would offset any gain in property tax dollars. They criticized

the use of Tax Increment Financing to provide infrastructure for the plant, and questioned the compatibility of the location near a river that had traditionally been a popular resource for canoeing, fishing, and swimming. Fratto, responding to the criticism, assured Windham residents that the council was acting judiciously. "The town council, town manager . . . are not the enemy," he told the media. "We are doing what we feel is in the best interest of the community."

An outline of the plant's operational aspects began to take shape soon thereafter, as representatives of the project appeared before the planning board in early March for the first formal presentation of the proposed plant. A handful of chemicals would be used in the de-inking process, including sodium silicate, caustic soda, hydrogen peroxide, sodium dioxide, surfactants, and DPTA. The substances would be stored and handled in a 6,000 square foot preparation building. Processing would take place in a 37,000 square foot structure, with a similarly sized warehouse, and a 5,000 square foot boiler house. A smokestack estimated at ninety feet (which later grew to one hundred fifty feet) and a seventy foot high bleaching tower would be perhaps the most visible aspects of the operation to off-site observers; the highest point of the buildings would be about sixty feet.

A particularly intrusive part of the operation would be truck traffic. In a worst case scenario, daylight hours would see a twelve hour period when one tractor trailer truck would be on Gambo Road every seven minutes, this being if a given truck arrived fully loaded and departed empty, and if empty trucks arrived and left after being loaded. To address this, VPS had begun negotiating with Guilford Industries, owners of the rail line which intersected the property, and had been told that minimal effort would be needed to

restore the line to usefulness. Restoration of the line would allow not only waste paper and the processed pulp to avoid being trucked, but also the bulk chemicals that had already drawn fire from opponents. With that in mind, buildings would be situated as near as feasible to the rail line.

The plant would require 750,000 gallons of water per day to recycle 240 tons of paper. Figures provided by VPS anticipated just under 4,000 gallons of water for each ton of pulp generated from the recycled paper, as compared with an industry standard of between 8,000 and 12,000 gallons for each ton of product. Stone and Webster officials predicted that state of the art equipment would make possible the half to two-thirds decrease in water usage. A treatment plant designed with a capacity of one million gallons per day would allow for the potential future sewerage of the commercial district in the northern part of town, reasoned Windham officials, a bonus that added credence to their belief that the plant would be a boon for taxpayers.

Those opposed to the project continued to maintain a visible and active presence. The issues they had identified as being of primary concern -- traffic, the impact of industrial development adjacent to the river, loss of the neighborhood's character, the storage of bulk chemicals on the site, and the wastewater treatment plant with its potential for one million gallons per day of treated effluent being directed into the river -- had galvanized residents of not only Windham but neighboring Gorham as well into action. By late March, when an inspection of the proposed site was held, opponents of the plant had given themselves a name -- Friends of the Presumpscot River -- and hired an attorney, Martha Gaythwaite, who had developed a statewide reputation as an environmental

crusader by serving as counsel for a group opposed to a coal-fired generating plant in Bucksport, a coastal community.

The site inspection attracted a crowd of about eighty onlookers, who braved rainy weather to listen to VPS representatives explain the project as they led members of the planning board around the property. Flagged wooden stakes indicated the corners of the parcel and outlined where large steel buildings would house the machinery for the de-inking process and support systems. If opposition to the plant remained constant, so, too, did the approach of plant proponents: their willingness to cooperate with area residents was demonstrated as company officials hosted a two and a half hour question and answer session in Windham's town hall after the inspection was finished.

Two of the spokesmen disagreed about the importance of the proposed Tax Increment Financing district to the viability of the plant. Ed Nichols of VPS insisted that the developers would look elsewhere if the TIF were defeated by voters, while Jim Rossi of Stone and Webster contended that it would be difficult but not impossible to go ahead with the project without the infrastructure financing that the TIF would provide. Following that meeting, supporters and detractors alike believed that the TIF, and ultimately the fate of the paper recycling plant, would be decided by voters in a referendum not likely to be held before November. In fact, the \$50 million project's fate would be decided at referendum in about nine weeks.

The debate over the recycling plant intensified after the site inspection. By mid-April, signs, newsletters, archaeological ruins, and a threatened boycott had become part of the story line:

- The Maine Historic Preservation Commission, in response to a query from the Massachusetts-based consulting firm that would oversee the plant's permitting process, said that it would recommend to the Maine Department of Environmental Protection that surveys of the historical aspects of the site be done prior to development. If the DEP were to agree with the recommendation, archaeological digs within fifty yards of the Presumpscot River shoreline would be a possible requirement.

- Signs that bore an anti-recycling plant message were removed from town property at the direction of Town Manager Fratto, who said he had received calls from residents offended by the signs, and that "political signs" were not allowed on public property. Opposition leader Judith Waltz insisted that the Friends of the Presumpscot River had a right to express their concerns, and charged town officials with promoting the development of the plant.

- A newsletter distributed by the Windham Historical Society included comments directed at the plant and developers, saying that the recycling project "... is being advocated and pushed by an aggressive group of young men with the assistance of the town manager and town planner, both of whom are 'from away.'" (That is, from outside the state of Maine.) She told a local reporter that attracting the plant to Windham would be a coup for the manager's and planner's careers, who would thereby pad their resumes and seek jobs elsewhere. Town Planner Westra responded in a letter to a local newspaper by calling her tactics "insane" and "a form of bigotry."

- The Friends of the Presumpscot River made available to members a form letter which called for a boycott of those businesses whose owners supported the recycling plant. Waltz said that her group had not mounted a serious effort to promote a boycott,

but wanted business owners and others to know how serious the Friends' efforts to derail the project were. One business owner who received a letter signed by two members of the opposition group characterized the threatened boycott as "... the act of desperate people doing desperate things."

The debate over the plant had turned from an informational dialogue and evaluation rooted in environmental, technical and financial merits to an impassioned exchange based more on emotion than rational arguments. "TIF Vote Will Pit Old Windham vs. New," read a headline in a local newspaper at the end of April, which went on to describe the issue as a contest between conservatives whose roots in Windham were decades, even centuries old, and who cared for the environment, versus liberals who were recently arrived in town and who preferred development to the environment. By now, too, the sequence of events which would lead to the defeat of the TIF referendum, and thereby seal the fate of the recycling plant, had been cast: a May 5 public hearing would be held by the town council to allow comment on the proposed Tax Increment Financing district. The fate of the Gambo Development District, as it had been named, would then be decided at referendum on June 9 when Windham voters would go to the polls in the town's municipal election.

At the end of a public hearing that attracted an overflow crowd of more than one hundred people, the town council voted 4-2 to create a TIF district on fifty-six acres of land, about three times the area that the paper recycling plant would occupy. Hopes were high on the part of the four council members who supported the TIF that the Stone and Webster project would prove a magnet for other industrial development. Both councilors who opposed the TIF designation were representatives of south Windham, and both

defended their votes by disavowing the idea of tax dollars, rather than the developer's resources, being used for infrastructure improvements.

With barely thirty days before voters would decide whether the TIF, and, in all likelihood, the Stone and Webster project would go forward, the facts of the financing district had become straightforward: approval of the TIF would allow the town to issue \$788,000 in bonds that would be used to improve Gambo Road and extend water, electric and natural gas lines. The plant, at Windham's 1992 tax rate, would generate approximately \$522,000 annually in property tax revenues. Half that amount would be used to repay the bonds over the first three years of the district's existence; the remainder would go to the town's general fund. One hundred percent of the taxes paid by VPS, and any other development that might occur within the district, would go to town coffers in the two years after the initial three year period. For five years -- the life expectancy of the TIF as prescribed by state law -- the assessed valuation of the TIF district would remain at pre-TIF levels. The chief advantage to this was that, in the eyes of the state Bureau of Taxation, those factors which are determined by a community's valuation -- for example, state aid to education and revenue sharing, and the annual county tax -- would remain unchanged over the term of the TIF. Thus, education funding and revenue sharing would not decrease in proportion to the town's valuation increasing by the value of the paper recycling plant; nor would the county tax increase as a result of the town's higher valuation. For a five year period, then, Windham could enjoy the best of both worlds: increased local tax revenues without decreased state revenues and a higher county tax. After five years, one hundred percent of tax dollars generated by development within the district would go to the town's general fund.

While both opponents and supporters of the TIF and of the paper recycling plant recognized that June 9 would be the day of reckoning for the proposals, two events took place days after the May 5 council meeting that threatened to have a major impact on VPS's plans.

Portland Water District officials had been meeting with the Maine Department of Environmental Protection since February in order to address licensing and water quality issues linked to the proposed wastewater treatment plant. After three months of discussions, the DEP bureau of water quality concluded that the Presumpscot River would not tolerate the additional effluent load that would be generated by the plant. Because a segment of the river downstream from Windham did not meet minimum dissolved oxygen standards, the federal Clean Water Act would prohibit the licensing of any new discharge sources. The Water District -- and, essentially, the paper recycling project -- was given two choices by the DEP: either demonstrate that the river could tolerate additional loading by updating the water quality data that had been established in 1980, or try to convince other sources that used the river as an effluent discharge to reapportion the wasteload for which they were currently licensed. Dismayed Water District officials huddled, and proposed a hurried-up study of water quality for the section of the river upstream of Windham, in contrast to the year-long effort proposed by the DEP. The state agency said it would consider the proposal after a review of the shorter study's methodology.

While plant supporters grimaced and neighbors of the facility rejoiced over the DEP news, another issue appeared. The town of Gorham, which shares the Presumpscot River with Windham as a common border, responded to the pleas of three of its residents

who lived near the river by asking that the DEP conduct a full environmental review of the paper recycling plant and the associated treatment facility.

VPS had said from the start that a major factor in Windham's favor as a location for the plant had been the town's capability of conducting its own review of the project using DEP criteria. Windham was one of five communities in the state which had applied to the DEP for, and been granted, Delegated Review Authority. The advantages of the designation were simple: for the DEP, a lessened workload while still maintaining control over a project -- at the conclusion of a town's review, the DEP retained the right to a forty-five review period, during which, if it decided that the town's work was incomplete or inaccurate, it could assert full jurisdiction over the project. For the town, Delegated Review Authority could be used as an attractive lure for development. During the booming 1980s, DEP review of major projects had been slowed to a snail's pace due to sheer volume; often a review took months and even years to complete, slowing and frustrating developers. If the town could instead conduct the review, the time from first proposal to potential approval of the project could be cut dramatically.

The Gorham town council was convinced that a project with regional impact such as the VPS plant merited a full DEP review, rather than local review by a planning board that might be anxious to add the \$50 million plant to the town's tax rolls. An angry Windham town council responded by suggesting that Gorham mind its own business, but that did not stop the Gorham council from unanimously approving a resolution asking that the DEP take responsibility for the full review. A week later, the city council in neighboring Westbrook took the same step. At that point, the choice as to whether to take responsibility for the review was out of the DEP's hands: a provision in the state law that

created Delegated Review Authority would force the DEP to do so, having been requested by a community which could be impacted by the project.

While plant supporters digested this latest portent of trouble, a meeting of the Portland Water District board of trustees barely two weeks before the town election yielded yet another hurdle. The WEDC had proposed to purchase an option on the eighteen acre piece of land, owned by the Water District, that was targeted for the VPS plant. Approval by trustees was required in order for the District to sell the \$2,400 option. Supporters and detractors of the plant argued that a decision by the board could signal to Windham voters either the Water District's endorsement or reservations about the project. At the board meeting, twenty-five opponents of the plant convinced the trustees to delay a decision on the land option until the board's next meeting, June 15, so that more information on the project and its impact on the river could be obtained.

Prior to the trustees' vote, Friends of the Presumpscot River attorney Martha Gaythwaite asked the board, "What is the rush here?" The answer to her question would provide another piece to the puzzle that was becoming clear to opponents of the plant. Without their own legal counsel present, trustees agreed to postpone their vote. The decision frustrated Windham officials and developers of the plant; opponents of the plant viewed the decision to postpone the vote as another battle won.

In order for an applicant to appear at a public hearing before the Windham planning board, the applicant must prove a legal right to the property in question: a deed of ownership, for instance, or an option to purchase. A series of appearances before the planning board by VPS representatives was to culminate in a June 1 public hearing, at which time final approval could have been given to the project. Without the option on the

Charges and countercharges continued to fly in the wake of the planning board meeting. In the week prior to the municipal election, the Friends of the Presumpscot River mailed a flyer, labeled as “. . . hyperbole, scare tactics and untruths” by supporters of the project, to Windham residents. In the flyer and in the media, the Friends continued to deliver the message that had been a consistent refrain since late the previous year: the plant would have an unacceptable impact on the river, increased truck traffic would infringe upon the neighborhood’s health and welfare, and the historic and serene character of the neighborhood would be compromised.

James Rossi, a spokesman for VPS, said the day before the election that he would recommend pulling the paper recycling plant out of Windham if the referendum on TIF were defeated. A local newspaper speculated that a low voter turnout would favor those working to defeat the plant.

The election drew thirty-seven percent of Windham voters to the polls, an uncommonly heavy turnout for a primary, even in a presidential election year. The issue that brought voters out, the referendum on whether or not to establish a Tax Increment Financing district that would facilitate the de-inking plant, was defeated by a 1,892 - 1,442 margin. The election that officials called the most important in the town’s history was over. Two days later, Rossi told a reporter, “It’s important that we are welcome in a community, and in Windham it became clear we weren’t.”

2. Coping With a Locally Unwanted Land Use

It has become commonplace in industrialized countries for citizens to resist development that they believe will adversely impact their homes or communities. Neighborhoods, communities and states reacting against proposed group homes, power plants or high level nuclear waste repositories has become the rule rather than the exception. Such efforts are typically labeled “Not In My Backyard,” or NIMBY, reactions by the media, whether the incident is an example of blatant bias directed against a deserving project, or a rational reaction to a poorly conceived proposal that could result in a disproportionate number of negative impacts.

No definitive record traces the first occasion on which a group of people resisted the efforts of others to put a less than desirable “something” into their back yards. The phenomenon is prevalent throughout this country and equally pervasive in other parts of the world. One often need go no further than one’s own community or region to encounter projects which have sparked reactions against Locally Unwanted Land Uses, or LULUs. Though an event that has been observed, recorded, and studied extensively, neither policy experts nor those who must cope with these incidents – developers, planners, various levels of government -- have identified a definitive solution, though numerous efforts have been made in response to LULU reactions.

For the purposes of this paper, terms such as NIMBY and LULU shall be regarded as neither positive or negative. We concede that popular use of the term “NIMBY,”

particularly by the media, generally contributes to an overall negative perception of those who resist the efforts of developers. Rather than condemn or praise, it is the goal of this paper to increase understanding, and to arrive at an alternative to the stalemates, the political bickering, and the “lose-lose” outcomes that are often the result of LULU confrontations. The phenomenon has come to be regarded by Maize and others as political, rather than technical, and as such involves emotional and partisan connotations. One of the more concisely worded explanations is advanced by O’Hare: “The essence of NIMBY obstruction is the ability of a relatively few neighbors to prevent development of a facility that seems noxious or risky to them, even though it is net beneficial to a larger society.” Are the “relatively few neighbors” to be blamed for poor judgment in opposing a “noxious or risky” facility? Should the society which endorses or needs a “noxious or risky” facility to be built and operated be held accountable, and charged with developing a more equitable distribution of costs that avoids settling on the heads of the few? Should O’Hare be held in questionable regard for inserting the word “obstruction” after “NIMBY,” rather than “success” or “achievement?” The research conducted in the course of writing this paper yielded a few distinct conclusions: this phenomenon does exist, it does have an appreciable effect on the development of a variety of facilities in this country and abroad -- and any person seeking to apply a simple positive or negative label such as “NIMBYism” to this concept risks oversimplifying a complex and far-reaching subject.

The task of this paper is to examine the “neighborhood versus developer” episode that occurred in Windham in order to seek answers to a number of questions: Why did this occur? In what ways was it similar to other incidents? What are the problems associated with such situations? Are there any benefits, and if so, what? How have individuals and

organizations responded in order to cope with similar reactions in other places? Was the Windham incident an example of narrowly focused self-interest on the part of the residents who worked to defeat the recycling plant, or a rational reaction to a threat to their homes and neighborhood? And, finally, does a model exist that could have been utilized in Windham that may have more effectively addressed the concerns of the opposition, and perhaps resulted in completion of the project?

“Certain Elements Common to Opposition Groups”

The reaction and ultimate rejection that backers of the Stone and Webster proposal in Windham experienced was in many ways typical of LULU occurrences worldwide. The main opposition to the proposed plant was centered in a fairly well defined neighborhood, clearly the area that would have been most affected had the operation gone forward. The de-inking plant became an “us vs. them” issue, lacking agreement or cooperation between developer and residents in most, if not all, of the series of events that culminated in “victory” for those who opposed the plant’s construction. As might be expected in an us vs. them scenario, the issue deteriorated from the rational treatment of a matter of public policy formulation to an emotionally charged, confrontational series of skirmishes culminating in a showdown over the merits of a proposed Tax Increment Financing district, without which the project was unlikely to go forward, and, in fact, did not.

The relationship between developers and backers of the project and those who opposed the plant was marked by a breakdown in communications. While those on each side of the issue continued to attend the same meetings and address the same issues, often exchanges between the two sides consisted mainly of charges and countercharges, claims

by opponents of incomplete information being provided by the developers, and accusations by proponents of false information being generated by neighbors of the proposed plant. It is likely that examination of transcripts of these meetings would allow a fairly accurate delineation of the point in time when communication ceased to be productive, deteriorating to a “talk at” rather than “speak with” scenario.

Each of these — opposition concentrated in a defined area, the “us vs. them” mindset, emotional involvement, and the breakdown of communication — is consistent with LULU episodes reported by a number of observers. Yarzebinski notes that certain traits are characteristic of opposition groups, and lists fear, meetings, emotions and politics as being commonly observed. Inasmuch as the intent of those who opposed the de-inking plant was “. . .to preserve the status quo in their community and focus on the negative side of development . . .,” their aims were identical to those in the majority of reported LULU incidents. A tactic employed to achieve that end, that of mass turnouts at meetings by those who opposed the de-inking plant, was effective, and predictable: a common rallying cry of those who oppose socially necessary facilities in their own neighborhoods is, “I’m in favor of the project if it were located elsewhere.” (Yarzebinski 1992)

The NIMBY phenomenon transcends local, state and national borders. A Dutch observer reports on the collective tendencies of participatory resistance by offering his own list of “implicit assumptions and premises:”

- The decision-making on local facility siting is laborious.
- The projects involved represent higher interests than those of the local population.
- Everyone is agreed on the usefulness of these facilities.
- Everyone prefers not to have the facilities situated in their own backyard.
- Everyone prefers to have the facilities situated in someone else’s backyard.

- The attitudes and opinions which go to make up the NIMBY phenomenon are seen as static. The NIMBY theory does not appear to allow for the possible alteration of insights regarding usefulness and location.

While each of these “assumptions” is open to debate, the list is useful for purposes of comparison. By applying these premises to the Windham episode, we see that the debate over the de-inking plant exhibited a number of predictable characteristics that lend credence to the idea that the Windham reaction, given the proposed project and the preferred location, was to be expected and a not extraordinary example of its type. The ramifications of the de-inking plant extended far beyond Windham’s borders; paper was to have been collected from each of the New England states and probably beyond, predicated largely on supply and demand. Certainly the regional impact of recycling 91,000 tons of office paper annually rather than adding it to landfills would have been significant. Indeed, opponents of the Windham plant never attacked the usefulness of the facility. Instead, location and its impact on the neighborhood and on the river were the main premises of their argument. The contention that static attitudes do not allow for mindsets to change regarding the usefulness and location of facilities such as the de-inking plant was clearly evident in Windham. The supporters and detractors of the plant became firmly entrenched in their respective positions, so that toward the end of the months-long debate, little if any useful communication was taking place. Instead, assertions, denials, and accusations characterized the rigid nature of the positions each side had chosen to adopt.

Increased traffic, decreased property values and the loss of neighborhood character, charges levied by opponents of the de-inking plant, are consistent with the description of the impacts of LULUs advanced by the American Planning Association. Neighbors with property on the main access road to the proposed site and other

surrounding streets feared the impact of heavy truck traffic delivering paper and hauling away pulp, a situation in which residential properties would almost certainly be seen as less than desirable by potential buyers. The site of the de-inking plant was only yards from the banks of the Presumpscot River. Though zoned for such a use, the historic applications such as gunpowder, cotton, and steel mills were due to the proximity of hydro power; none remained in operation at the time of the de-inking plant debate. Instead, the area, while retaining a handful of industrial uses -- a bark mulch company, a wholesale lumber operation, a propane storage facility -- had tended toward residential properties, for many of whom the largely unspoiled nature of the river was a focal point. Consequently, construction of the \$53 million plant was condemned by many neighbors as running contrary to the character the area had assumed as industrial uses vanished, regardless of modern-day zoning.

Observers who have commented on the psychological aspects of the NIMBY and LULU phenomena emphasize the emotional reaction and distrust typical of those whose neighborhoods have been targeted for placement of a potentially objectionable facility. Inhaber speaks of policy makers who tend to “. . .dismiss the (NIMBY) syndrome as . . . selfishness and ignorance. . .” and the “. . .sense of coercion. . .” that is linked to fear for both physical and psychological well-being. Windham officials and other supporters of the de-inking plant were guilty of this, to an extent. Their primary focus was that of attracting industry to Windham as a way of broadening the town's tax base. For many backers of the Stone and Webster proposal, only the “selfish and ignorant” could oppose such a goal, particularly a goal which seemed, for several months, to be practically assured. A few of the plant supporters had worked for thirty years to lure industry to Windham. Several of

the opponents of the plant had lived in the vicinity of the proposed site all their lives; as a result, emotions played a strong supporting role in this drama. Danner echoes this thought, calling participatory efforts by local citizens in reaction to proposed development “. . . an understandable, emotional reaction. . .,” particularly when those most affected by a project have not been provided with adequate information or “. . . have chosen to reject scientific evidence. . .” documented by the developer. While Stone and Webster representatives made credible efforts to dispense information to the public, newspaper accounts have documented a number of instances when the questions raised by opponents were answered either incompletely or with a “We don’t know yet.” Whether this was due to a lack of information or refusal on the part of the developers to provide answers to certain questions is problematic; when a developer’s representative first said, “I don’t know” to a question from neighbors, the first hint of the developer being less than forthright had been established. With this perception in place, the facts that were presented may then have been tainted with the notion that “Incomplete information is being provided by them; how do we know that the information they do provide is true?”

Portney has explored the cultural and psychological aspects of facility siting at length. He contends that Americans have incorporated a few clearly identifiable “normative disagreements” into this culture, and discusses the uneasy tension between “. . . the role of science and technology in solving problems against skepticism of science and technology’s ability to do more than create new problems in pursuit of solutions to old problems.” In casting the Windham NIMBY episode against this background, we may appreciate more fully the lack of confidence that neighbors had regarding the ability of a major corporation to site a large, technologically advanced paper recycling plant within

yards of a river and of their back yards and not have a major impact on both. The neighbors did not trust either the developers of the project or local governmental administrators to safeguard their interests, which supports another of Portney's normative disagreements: that of government and society, and "...the extent to which government is valued as an instrument of society." Neighbors of the de-inking plant did not hesitate to question, resist and oppose town officials when the latter demonstrated that their lot had been cast with the developers; the relationship between neighbors and officials became openly antagonistic at times as the two sides debated the facility's merits. The role of government was called into question by neighbors, and never satisfactorily answered: the Stone and Webster proposal ultimately resulted in citizens being forced to oppose the efforts of their own town government, as well as those of other citizens who had differing opinions as to what was best for the community.

Failure to Anticipate the Reaction of Neighbors

The attempt to construct a de-inking plant in Windham failed due to a single primary factor: the lack of an effective response on the part of the developer and local supporters of the de-inking plant to the collective reaction generated within the neighborhood. A secondary factor: the effective manner in which neighbors of the site responded, determining that a de-inking plant would not be in their best interests, and plotting a course of action that ultimately led to the proposal's defeat. The developer and supporters failed to address the concerns raised by neighbors in a way that enabled the plant to receive a final review by the town's planning board, let alone progress to the point of construction. Experts discussing the problem of siting LULUs speak in terms of citizen

participation, adversarial versus unitary democracy, and the need to educate and involve members of the community who would be most affected if an undesirable facility were proposed for local development. A review of the events that led to rejection of the Tax Increment Financing district and, by default, the paper recycling plant, touches on each of these, and sheds further light on the participatory reaction on the part of neighbors that led to rejection of the plant.

Initial contact between Windham and Stone and Webster officials took place during the summer of 1991. By September, a public announcement had been made that the Settler Park location would be the site of the paper recycling plant. The announcement was accompanied by the comment from a Stone and Webster (later Virgin Pulp Substitutes, or VPS, a subsidiary) spokesman that "...we want to be open. ..." in communicating development plans to the community. Shortly thereafter the Windham Economic Development Corporation sponsored an informational forum to explain its role in helping to attract the Fortune 500 company to town. Thus the developer and its most visible supporter took pains early in the process to create an open approach to communicating plans for the facility as it developed. Yet, by June 1992, which saw a confrontational hearing before the town's planning board and a defeat at referendum of the TIF district that would have allowed the recycling plant to go forward, relations between the developer, town officials, and the segment of the community that opposed the de-inking plant had deteriorated to accusations and countercharges. Though attempts were made to maintain an open, productive process, this approach failed.

In essence, the developer, with the tacit consent of its local partners -- town administrators and the Windham Economic Development Corporation -- applied a version

of the "Decide-Announce-Defend model" to its siting attempt, ". . . in which the only role reserved for the local community is simply to allow itself to be persuaded of the benefits of the project," asserts Wolsink. While attempts at communication by Stone and Webster spokesmen did take place, at no time did the developer extend an offer to the neighbors of the project to actually participate in the siting and review process. Rather, information was dispensed as the developer saw fit, often serving only to provide more ammunition to neighbors in their battle against the de-inking plant. Though the developer was subject to a local, state and federal regulatory process, and may have been able to prove that the impact of the proposed plant could be compatible with the immediate environment, because of its failure to adequately respond to concerns raised by the citizenry, the principals of VPS found that, ". . . a sufficiently outraged locality can bring any project to a halt." (O'Hare 1977)

Once it became apparent that opposition to the de-inking plant had become a formidable obstacle, neither the developer or community supporters seem to have considered re-evaluating and perhaps modifying the process that had been set in motion. Perhaps the critical juncture at which those who were concerned with the plant's impacts became firmly entrenched in their opposition to the plant -- and the non-participatory role which had been assigned them by developers -- was the meeting of the town council in late February at which approval was given to two significant items: a development agreement with Stone and Webster, and expenditures that would allow design work on the wastewater treatment plant to move forward. The former action in particular was seen as onerous by the NIMBY faction; the text of the agreement was debated and opened to public comment without being released to the public. In effect, the council drew a line in

the sand and dared neighbors of the proposed site to step over it. Televised on the local cable station, the council's actions drew immediate criticism, and generated support for those opposed to the plant. Though developers and supporters of the plant had yet to realize it, “. . . (n)o matter what one's personal, political, or professional opinion of citizen participation is, it merits review unless the chosen course of action is to have the NIMBY team stop and/or delay” the project (Yarzebinski 1992). In that proponents of the project had not chosen to vest the opponents with at least some degree of participatory role, for the NIMBY group the choice was clear: fight or flight, and, as one vocal member of the opposition made clear to the town council, “There's no flight in this guy!”

“ . . . (T)he selfish refusal of a small number of people to act in the interests of the greater good,” or a rational response from citizens concerned with the welfare of their community?

Observers have noted a variety of social impacts brought about as a result of or in connection with the LULU phenomenon, and have reported in detail both the costs and the benefits associated with NIMBYism. A review of the arguments for and against this particular brand of citizen participation will illuminate further the Windham experience and provide greater understanding of the pros and cons that were generated.

NIMBY responses have been prompted by a wide array of potential land uses: landfills, power plants, hazardous waste disposal sites, group homes, prisons, wind turbine farms, daycare centers, and offshore oil drilling are a few of the proposed development projects that have led to documented cases of “intense, sometimes emotional, and often adamant local opposition” (Kraft and Clary 1990). Those seeking to develop such

facilities have frequently found that their goal can be successfully opposed by those whose only link to the project is their physical proximity to the proposed site. Many times the only connection among individuals within groups that oppose facility siting is their common rejection of the project: the tendency for people to unite in opposition to development which threatens their homes or way of life cuts across social classes, income levels, racial lines, gender, and geographic location. Whether a superhighway in Winchester, England or several dozen affordable housing units in Port Chester, New York, developers have found that the best of intentions sometimes have no bearing on whether a project will be completed. If the perception of local inhabitants is that the proposal is an undesirable one, the potential exists for a participatory reaction on the part of neighbors that may make obtaining approval for the project difficult or impossible.

The scenario in which citizen participation may produce a backlash against a development proposal often adheres to a fairly predictable script: a project designed to meet a local, regional or national need is proposed for a given location which has been found to be suitable for the stated use. The developer initiates review of the project as required by one or more levels of government. Perhaps the developer makes an attempt to communicate with the local community about the project and the impact it will have on neighbors; perhaps he or she does not. Concern over the perceived impact of the project is voiced at some point during the review process by those most directly affected by it: those who are next door, downstream, or downwind of the property, or likely to experience the effects in a somewhat less direct manner, such as through increased traffic volumes. Claims and counterclaims over the impacts that will result from the project are traded by involved parties, and, some time thereafter, depending on the level of intensity of the

opposition, the developer either redesigns the project to meet the demands of those opposed, relocates the project to a less desirable location, or simply abandons plans to develop the facility.

Whether the foregoing is an example of NIMBYism, that is, the selfish desires of a few winning out over the needs of society, or an instance in which citizens came together and organized in a collective and rational manner in order to defeat a poorly conceived project, the net effect is the same: a facility intended to meet a need associated with and created by the existing social system has failed to be built, thereby leaving that need unmet. A survey of trade journals and industry publications reinforces the notion of a social phenomenon that has affected society on many levels: accounts of LULU incidents and advice on how to effectively counter these occurrences originate from the waste management industry, builders, architects, local, regional, state and federal governments, and planners, among others.

Reports of the problems and costs that stem from reactions to LULUs abound:

- No new low level radioactive waste facilities have been built in this country in over twenty years. As a result, thousands of de facto sites, often inadequate for storage and disposal, including hospitals and research centers, have been created (Rabe 1994).
- A retail analyst reports that the time devoted to developing a so-called “big-box” retail store such as a Wal-Mart or a Home Depot nearly doubles when community resistance is encountered. Costs, obviously, are also greatly increased, often by twenty to thirty-five percent.
- A study initiated by former President Bush, conducted by the Advisory Commission on Regulatory Barriers to Affordable Housing, reported in 1990 that much of the nation’s problem with the availability of affordable housing can be traced to the NIMBY syndrome. The group concluded that, “Because of the (NIMBY) factor,

renters, first-time home buyers and, in some communities, middle-income households cannot find decent, affordable and conveniently located housing.”

- Because LULU reactions have become such a formidable barrier to the siting of new hazardous waste facilities, only one of the more than twenty commercial hazardous waste landfills operating in 1994 had been built on a site chosen since the Resource Conservation and Recovery Act, or RCRA, was enacted in 1976 to provide guidelines for such activities. As a result, more than two-thirds of existing hazardous waste storage, treatment and disposal facilities fail to meet standards imposed by the Environmental Protection Agency for the protection of groundwater (Gerrard 1994).
- The cost to taxpayers generated by LULU reactions has yet to be calculated. An interesting view of the potential for increased costs through these incidents is discussed by Gerrard, who contends that whether certain individuals reside in low-income housing, group homes, homeless shelters, hospitals, or jails at any given time is often only a question of changing personal circumstances and the availability of public facilities. While any of these options may serve to spark a LULU reaction, it is a fact that providing hospital or jail beds is a far costlier alternative than making available living quarters in group homes, homeless shelters, or low-income housing. It follows, then, that taxpayers are the penalized party if LULU reactions make the siting and construction of hospitals or jails impossible.

At a more generalized level, the NIMBY syndrome and LULU reactions produce at least three undesirable consequences: 1) siting becomes impossible at the state or regional level as the perception of undesirability is established at first rejection, then follows a project as it is proposed at community after community; 2) the need for a facility grows more acute even as targeted sites resist attempts to locate the facility in their “back yards,” and; 3) rejection of the siting of a new facility means that existing facilities will continue to operate, facilities that are often inadequate and may be in various stages of deterioration (Delogu 1990). Indeed, in the case of storage of low level radioactive waste,

the absence of suitable facilities means that the producers of these waste products will serve, at least temporarily, as storage sites, generally in circumstances that would not be considered licensable under current state and/or federal standards (Rabe 1994).

Is the label, and connotations thereby implied, of "NIMBY" simply a knee-jerk response to what may in fact be an example of a rational and thoughtful response to a development that would prove to be more detrimental than advantageous? Why do people react in ways that lead to accusations of NIMBYism by developers and others who have a stake in the success of a given project? One reason often cited is an economic one: the specter of declining property values resulting from a facility being constructed in one's neighborhood, community, or region. While the impacts of various facilities may vary as widely as those associated with a group home to the potential effects of a nuclear power plant, differences in the reactions of those opposed to the projects may be nearly imperceptible.

"An Aware and Involved Citizenry"

Citizen groups that prevail over developers avoid not only the construction and operation of an undesirable land use in their neighborhoods or communities, but also the health and environmental risks, threatened loss in property values, tourism, and community image (Gerrard 1994). Other positive aspects may accrue as well, sometimes in a less direct manner. For example, the owners of existing facilities benefit from NIMBYism if their facilities are allowed to remain open longer because of the failure of a new facility to be built, and possibly are able to charge more as well. Should new housing be successfully opposed by a group of concerned citizens, for example, the owners of

existing housing will continue to operate in an artificially limited market, thereby ensuring rents at least as high as before the new housing was proposed. In a similar vein, some states allow municipalities to charge a tax or other fee on waste disposal facilities. If the siting of new disposal facilities is restricted, those municipalities would benefit from higher revenues earned by the existing facilities. The environment also stands to benefit from the rejection of high impact facilities such as power plants, rendering works, or chemical manufacturing plants. An extension of this poses a likely further benefit: “. . . that opposition to the siting, expansion, or operation of waste disposal facilities has helped spur a re-evaluation in the way society creates and disposes of waste,” leading to expanded recycling, a reduced waste stream, and the development of alternatives to traditional waste-producing methods of manufacturing and ways of living (Gerrard 1994).

An interesting perspective on the potential value of LULU reactions is advanced by O'Hare, who contends that the lengthening of a review process that often results from LULU related intervention “. . . makes it more likely that good projects will be distinguished from bad.” However, a longer review process also tends to make the playing field less level, so may be an imperfect gauge of a project's merits. The lengthened review process consistently works to the advantage of project opponents: a lengthened review process increases costs for the developer, magnifies the apparent costs as “sequential attacks” are made, and tends to lose the interest of all but the most committed parties, who often are the neighbors or community defending their homes from unwanted development.

Experts agree that a positive benefit of LULU reactions is the involvement of citizens who may not have known their neighbors, or attended a town meeting, or taken

an interest in public affairs prior to a controversial project being proposed in their neighborhood or community. Rabe notes “. . . a more active and involved citizenry” as a result of government attempts to locate sites for the disposal of low-level radioactive waste. Schwab reports that segments of the community traditionally outside the sphere of political influence such as the working class and minorities, when united in opposition to a LULU, may progress from “. . . backyard issues to a broader perspective” that has led to examples of “. . . multicultural cooperation.” Wolsink insists that citizen groups that successfully resist LULUs are not simply passing the negative effects of unwanted development on to another neighborhood or community. Instead, he says, the involvement of citizens and the resultant media attention often calls attention to “. . . a particular technology or policy with severe environmental impact” that is recognized at the local level, and cites Gore’s contention that NIMBYism and LULU reactions constitute a “healthy trend” for that reason.

By surveying multiple perspectives on the impact of the participatory process that often develops when a LULU is proposed, the observer who is quick to adopt the popular wisdom that NIMBYs are knee-jerk reactionaries opposing any and all development at whatever cost may instead conclude that the phenomenon is a multi-faceted issue that turns largely on the perspective of the involved party. NIMBYs have opposed both “good” and “bad” projects, have “won” some confrontations and “lost” others. Perhaps the most positive effect that the participatory efforts of concerned citizens have had on society is that of forcing a second look, a re-examination of the values that lead to the development of nuclear power plants, agri-business, and landfills, among other high impact facilities.

“Consider Conflict as Part of the Siting Criteria”

Within the sphere of NIMBY considerations -- from recognizing the phenomenon to defining the concept to identifying the problems, benefits, and peripheral ramifications - only one category outweighs the sheer volume of reported and potential incidents of citizen reactions to LULUs: the number of proposed solutions with which to address the NIMBY factor. A survey of these proposals is remarkable in that, while similarities are shared among some, and stark contrasts appear between others, only a single conclusion becomes clear: no one “solution” has been advanced that provides a successful coping mechanism to effectively address the phenomenon. Nearly all developers of controversial projects anticipate opposition, and prepare in different ways to either counter or work with the opposition that forms:

- “Overcoming NIMBY requires personal commitment, intense planning, and hard work. There’s simply no other way.” -- Fletcher, 1990.
- “These disputes are political, not technical. . . Politics is about beliefs, values and perceptions, not science. . . The experts you need are likely to be communicators, pollsters, and political strategists, not engineers and economists.” -- Maize, 1992.
- “. . . in a reverse Dutch auction, the price would rise until a town or county came forward with an environmentally acceptable location. After that sole bid the auction would end. . . it is the true social cost of the facility . . . the price the rest of us have to pay so the wastes aren’t in *our* backyard.” -- Inhaber, 1992.

- “When we found that people said they opposed facility siting because they were being asked to bear disproportionate costs relative to benefits, we began prescribing processes to allow benefits to increase. There is abundant evidence that this does not and will not work in practice.” -- Portney, 1991.
- “. . . companies or governments can negotiate with the community to provide compensation and minimize the nuisance that such facilities can cause.” -- Logomasini, 1992.

The foregoing are but a few of the solutions to the LULU phenomenon proposed by observers from a variety of backgrounds. Governments have jumped into the fray as well; Canada and Holland have developed national responses to the problem, while in this country a number of states, including Minnesota, Wisconsin, California, Massachusetts and Connecticut, have attempted to deal with the phenomenon through legislation. Perhaps Canada's efforts have been most effective; its process for siting low level radioactive waste storage facilities has focused on public education and participation. This “bottom-up” approach has achieved greater success to date than the “top-down” efforts employed by the U.S. government and various states (Rabe, 1994).

An example is the Massachusetts attempt at addressing the LULU problem. Four lessons have become apparent as a result of repeated attempts to site controversial projects in that state: 1) the decision process must remain simple and easily understood, 2) delay favors those opposing the facility, 3) political leadership is crucial to the participatory siting process endorsed by the Act, and 4) the difficulties of conducting a coherent and rational review with a public that is undereducated and probably has

developed misperceptions about threats to health and the environment are perhaps insurmountable (O'Hare 1993).

“(A)n exploratory and flexible process that can meet scientific and public scrutiny.”

This paper has thus far discussed the phenomenon of citizen reactions in response to Locally Unwanted Land Uses, and the characteristics of these incidents; reviewed some of the positive and negative aspects of such reactions; examined why the response to the VPS recycling plant in Windham occurred; and initiated an examination of how those proposing controversial developments could better address the concerns of citizens in order to avoid the costs associated with LULU incidents.

In retrospect, the mistakes made during the siting process in Windham are apparent. While the developer and proponents in the town made attempts to communicate with the community about the project, too often questions were turned aside with “We don’t know” or “It’s too early to tell.” Perhaps these were honest answers. To those who had participated in the collective neighborhood effort to defeat the de-inking plant’s siting, such answers served only to increase skepticism and provide fuel for continued resistance.

No effort was made by the developer or proponents to invite those who opposed the project into the review process. The final months of the VPS attempt at winning approval for the plant deteriorated into an “us vs. them” scenario in which little or no productive communication took place. Rather than incorporating citizens who opposed the project into the review process, the developer and town officials stuck to the rigidly defined, locally prescribed course to which any development would be subject. An ordinary project of manageable scale proposed in the Gambo area would likely have

generated some opposition; the large scale, high impact project that was put forth by VPS required extraordinary efforts in order to avoid the calculated and organized level of opposition it engendered. None were forthcoming.

We suggest the following adjustments to the proposal and review process, with the objective of initiating and engaging in a participatory process that would have the potential for yielding acceptable results for all parties:

1. Design a process that calls for equality of participation between citizens, local government, and developers. It is possible that Stone and Webster, later VPS, representatives believed they had engaged in an open, communicative process when early on they told the media that they intended to adopt those principles. Damage control is the only term that accurately describes the VPS attempts at communication as the referendum neared. Rather than adhering to the DAD model – Decide, Announce, Defend – VPS and town administrators could have taken their cue from the neighbors' response to the sludge plant proposal, recognized that this site was going to be a controversial one, and initiated a meeting with neighbors. Had VPS extended an invitation to citizens to participate in an advisory committee, or a formal schedule of meetings between developer and residents, the recommendations from which would be incorporated into the review process, the potential would have existed for “. . . an exploratory and flexible process that can meet scientific and public scrutiny” that would have resulted in a “legitimizing” of the process and results in the eyes of those who mattered most, the neighbors of the project. (Clary 1993; Portney 1991)

2. Local government must explore a leadership role as mediator and facilitator of the review and development process, rather than adopting an openly pro-development bias. A source of the frustrations shared by residents near the paper recycling plant was the knowledge that “the powers that be” in town hall were openly supportive of the threat to their neighborhood. Town administrators instead should have chosen a full disclosure and citizen empowerment policy from the outset: informing citizens at the beginning of the process and inviting them to assist in analyzing the proposal as it moved forward, engage in goal setting as to what would be acceptable development in their neighborhood, and to assist the developer and town officials in a strategy aimed at consensus (APA 1991; Clary 1993).

3. Develop and adopt a quantifiable approach to evaluating the best possible site within the town. Both the developer and the neighbors of the paper recycling plant debate repeatedly offered reasons for why and why not to construct the facility at the proposed site. While financial considerations could be attached to some of these reasons, others, particularly those advanced by residents, were less easily measured: how, for instance, could the impact of a recycling plant on the character of the neighborhood be determined? Recommendation: hire a consultant mutually agreed upon by representatives of the developer, the town, and neighbors of the site, to evaluate and develop an impartial system whereby both easily quantifiable – cost of utility installation, proximity to rail line – and not so easily quantifiable – impact on the neighborhood, affect on the river – subjects that evolved during the review process could be examined, values attached, and overall “scores” be determined for both the costs and the benefits of the project. The importance of all participants “buying-in” to this process cannot be overemphasized: simply put, if all

sides of the debate agree with no reservations to engage in the cost and benefit determination and to abide by the results, no matter the outcome, the emotional distractions that dominated the issue near its end would not have assumed the level of significance that they did.

4. The developer must adopt an openly communicative approach to the project. An effective information campaign will result in a better educated public. If a project merits serious consideration by a community for inclusion within its borders, then it has much to gain by adopting a full disclosure stance. Upon release of the news that the developer is considering a community for a new facility, information packets for media and interested citizens should be made available. The developer should pursue a public meeting with either the community's legislative body, or the planning board or equivalent, and welcome opportunities to convey facts about the project to community groups. A contact point -- a telephone number, a spokesperson -- should be made available and publicized through local channels.

5. Proponents of the project must pay attention to community attitudes when the development is introduced and throughout the review process, and maintain a level of flexibility that will allow an effective response to concerns or criticism. In the case of VPS, the full significance of community opposition never dawned on proponents until the day after votes were counted and the TIF had been defeated at referendum. Had developers been more closely attuned to community attitudes, and committed resources to addressing those concerns, it could have been possible to put the review process on hold while attempting to develop a more effective dialogue with neighbors, i.e., initiating a more inclusionary process leading to empowerment and equal participation opportunities.

6. Communities should consider recognizing the possibility of LULUs in comprehensive plans and zoning ordinances. In Windham's case, the town had yet to accept that the neighborhood which was targeted for development by VPS was zoned based on past history, not modern day reality. An evaluation of existing zoning, with consideration given to segregating possible LULUs from neighborhoods that would not be receptive to them, and recognition of LULUs in the comprehensive plan would be an indication that the community had addressed the possibility that potentially undesirable projects may be proposed within the community, and laid the groundwork for a more effective response for that eventuality.

Conclusion

Industrialized countries in the late twentieth century have accepted that certain uses of land are going to face strong opposition at the local, regional, or state level, dependent upon how far reaching the impacts are which are associated with the proposed land use. LULU and NIMBY incidents have become commonplace in reaction to such socially necessary projects as day care centers, group homes, radioactive waste storage facilities, and power plants. The phenomenon presents both problems and benefits to society: while the need for given projects does not go away just because siting attempts are opposed and defeated, a more active and involved citizenry has focused attention on the importance, or lack thereof, of the facility. Both states and countries have attempted to cope with the defeat of needed projects with a variety of mechanisms. Perhaps the best advice to date is a greater focus on communication, with participation by all parties in the siting and review process.

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